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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board ("Board") held a General meeting on July 19, 2017, at the Mission Inn Hotel, Dignitaries Parlor Room, 3649 Mission Inn Avenue, Riverside, California 92501.

2. **ROLL CALL**

Ramon Alvarez C., President and Dealer Member, called the meeting of the Board to order at 10:05 a.m.

Present:	Ramon Alvarez C. Anthony A. Batarse Jr. Ryan L. Brooks Kathryn Ellen Doi David C. Lizárraga Bismarck Obando Glenn E. Stevens	William G. Brennan, Executive Director Robin P. Parker, Senior Staff Counsel
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Absent: Rahim Hassanally
Victoria Rusnak

3. **PLEDGE OF ALLEGIANCE**

Ms. Doi led the members and staff in the Pledge of Allegiance.

4. **APPROVAL OF THE MINUTES FROM THE JANUARY 18, 2017, AND MARCH 15, 2017, GENERAL MEETINGS, AND MAY 18, 2017, SPECIAL MEETING**

Mr. Stevens moved to adopt the January 18, 2017, and March 15, 2017, General Meeting minutes, and the May 18, 2017, Special Meeting minutes. Mr. Obando seconded the motion. The motion carried unanimously.

5. **CONSIDERATION AND PRESENTATION OF RESOLUTION TO MICHAEL J. FLANAGAN, RETIRING DEALER ATTORNEY**

Mr. Brooks moved to present a Resolution to Michael J. Flanagan, retiring dealer attorney, in recognition of his contribution to the New Motor Vehicle Board. Mr. Lizárraga seconded the motion. The motion carried unanimously. The audience was invited to make public comments. Mo Sanchez, Gavin Hughes, Bert Rasmussen, Anthony Bento on behalf of the California New Car Dealers Association, and Colm Moran all offered their congratulations. Mr. Flanagan thanked the audience for their kind remarks and appreciated the opportunity to work with them. He also thanked the members and staff. Mr. Alvarez, on behalf of the Board, thanked Mr. Flanagan.

6. **ORAL PRESENTATION BEFORE THE PUBLIC MEMBERS OF THE BOARD**

CALIFORNIA NEW CAR DEALERS ASSOCIATION v. JAGUAR LAND ROVER NORTH AMERICA, LLC
Protest No. PR-2463-16

This matter was postponed until after agenda item 21 pending arrival of the court reporter.

7. **CLOSED EXECUTIVE SESSION DELIBERATIONS**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board convenes in closed Executive Session to deliberate the decisions reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Pursuant to Government Code section 11517(c)(2), the Board could adopt the proposed decision, make technical or other minor changes, reject the proposed decision and remand the case, or reject the proposed decision and decide the case upon the record.

CONSIDERATION OF PROPOSED DECISION FOLLOWING REMAND

CALIFORNIA NEW CAR DEALERS ASSOCIATION v. JAGUAR LAND ROVER NORTH AMERICA, LLC
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Consideration of the Administrative Law Judge's Proposed Decision Following Remand, by the Public Members of the Board.

This matter was postponed until after agenda item 21 pending the arrival of the court reporter.

8. **OPEN SESSION**

The Public Members remained in open session.

9. **CONSIDERATION OF ORDER VACATING “FORMAL REQUEST PURSUANT TO VEHICLE CODE SECTION 3050(c)(1) CONCERNING ROADTREK MOTORHOMES, INC.”**

MEGA RV CORP., dba MCMAHONS RV v. ROADTREK MOTORHOMES, INC.
Protest No. PR-2199-10

MEGA RV CORP., dba MCMAHONS RV v. ROADTREK MOTORHOMES, INC.
Protest No. PR-2201-10

Consideration of vacating “Formal Request Pursuant to Vehicle Code Section 3050(c)(1) Concerning Roadtrek Motorhomes, Inc.” directed to George Valverde, then Director of the Department of Motor Vehicles, dated October 23, 2012, in light of Judgment on Petition for Writ of Administrative Mandamus in *Roadtrek Motorhomes, Inc. v. California New Motor Vehicle Board; Mega RV Corp. (Real Party in Interest and Respondent)*, Orange County Superior Court, Case No. 30-2013-00624042, and the Board Decisions dated March 15, 2017, setting aside and vacating the Decisions dated October 17, 2012, in Protest Nos. PR-2199-10 and PR-2201-10, by the Public Members of the Board.

This matter was postponed until after agenda item 21 pending the arrival of the court reporter.

10. **DISCUSSION AND CONSIDERATION OF WHO WILL ATTEND THE OUT-OF-STATE TRIPS FOR THE 1st HALF OF FISCAL YEAR 2017-2018 THAT WERE PREVIOUSLY APPROVED BY THE BOARD - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan concerning who will attend out-of-state trips for the 1st half of fiscal year 2017-2018. As indicated in the memo, at the January 18, 2017, General Board meeting, the Board members approved the following out-of-state travel plans for the first half of fiscal year 2017-2018.

- Executive Director and one Board member to attend the National Association of Motor Vehicle Boards and Commissions (NAMVBC) Fall Workshop in September 2017, in Alexandria, Virginia.
- Executive Director and one Board member to attend the Recreational Vehicle Industry Association’s (RVIA) 54th National Trade Show in December 2017, in Louisville, Kentucky.

The staff recommended that Mr. Brennan and two staff members (Danielle Vare and Dawn Kindel) attend the NAMVBC Workshop and the Executive Director attend the RVIA trade show. Mr. Brennan indicated that at this time, only the out-of-state travel request for the NAMVBC Fall Workshop would be submitted to the Governor.

Mr. Stevens moved to approve the proposed attendees for the out-of-state trips for the first half of the 2017-2018 fiscal year. Mr. Batarse seconded the motion. The motion carried unanimously.

11. **CONSIDERATION OF NOMINEE FOR THE SOLON C. SOTERAS EMPLOYEE RECOGNITION AWARD RECIPIENT AS RECOMMENDED BY THE BOARD DEVELOPMENT COMMITTEE**

At the July 18, 2000, General Meeting, the members adopted an Employee Recognition Award Program to recognize staff for their accomplishments. The program was renamed the Solon C. Soteris Employee Recognition Award. The staff submitted employee nominations to the Board Development Committee, David Lizárraga and Ryan Brooks, who ultimately recommended Danielle Vare as the Employee Recognition Award recipient. Danielle is a Staff Attorney in the legal division. Mr. Brennan commented that Danielle is a tremendous asset for the office; she is efficient, a team player, thoughtful, and works cooperatively with the entire office. Mr. Flanagan echoed Mr. Brennan's comments and agreed that this award to Danielle was well-deserved. Mr. Lizárraga moved to adopt the Committee's recommendation. Mr. Obando seconded the motion. The motion carried unanimously.

12. **ANNUAL DISCUSSION AND CONSIDERATION OF THE METHODS FOR DETERMINING BOARD FEES - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan concerning the annual discussion and consideration of the methods of determining Board fees. Mr. Brennan indicated that the fees collected are reasonable and consistent with the needs of the Board. These fees are an appropriate reflection of the needs of the Board and the fees are not a tax. Mr. Brooks commented that he wanted to make sure the Board was not charging too high of fees.

13. **BOARD FINANCIAL CONDITION REPORT FOR THE 3rd QUARTER OF FISCAL YEAR 2016-2017 - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel, and Suzanne Luke concerning the Board financial condition report for the 3rd quarter of fiscal year 2016-2017. Mr. Brennan indicated that the Board is on track for all expenditures and anticipates a 10-12% savings over budget allocations. At the March General Meeting, Mr. Brennan was concerned that the dealer fees were down for the current fiscal year, however, that concern has disappeared as will be discussed shortly.

14. **STATUS REPORT CONCERNING THE BOARD'S COLLECTION OF THE ARBITRATION CERTIFICATION PROGRAMS' ANNUAL FEE - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Jackie Grassinger concerning the Board's collection of the Arbitration Certification Programs' annual fee. Mr. Brennan reported that \$1.253 million was requested by the Arbitration Certification Program to fund its operations. Mr. Brennan indicated \$.589 per vehicle was assessed and the

Board collected \$1,257,516; the fee collection was completed with 100% cooperation.

15. **DISCUSSION AND CONSIDERATION OF THE BOARD'S PROPOSED BUDGET FOR FISCAL YEAR 2017-2018 - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel, and Suzanne Luke concerning the Board's proposed budget for fiscal year 2017-18. Mr. Brennan reported that the Board's proposed budget for the upcoming fiscal year is \$1.805 million. Mr. Brennan remarked that the proposed budget for the next fiscal year is nearly identical to the current fiscal year with the exception of \$60,000 more for payroll expenditures due to raises that took effect this month. Ms. Doi moved to adopt the proposed budget. Mr. Obando seconded the motion. The motion carried unanimously.

16. **DISCUSSION REGARDING THE 2018 NEW MOTOR VEHICLE BOARD INDUSTRY ROUNDTABLE - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Danielle Vare concerning the upcoming Industry Roundtable. Mr. Brennan reported that the Roundtable will be held on May 17, 2018, in Sacramento at the DMV Assembly Room. He indicated that the staff is looking for potential speakers and topics. As indicated in the memo, the following are potential topics/speakers:

- "Joint employment" claims of dealership employees
- Case management statistics
- Manufacturer Performance Standards and the recent *Beck Chevrolet v. General Motors* case
- NMVB Case of First Impression: Manufacturer Export or Sale-for-Resale Policies
- Electric/Alternative Fuel Vehicles
- Autonomous Vehicles and their Regulation
- Update on the California Road Charge Pilot Program
- Incentive Programs and how dealers can achieve objectives as well as how manufacturer use them as leverage

17. **CONSIDERATION OF THE 2017 EDITION OF THE NEW MOTOR VEHICLE BOARD ADMINISTRATIVE LAW JUDGES' BENCHBOOK - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum and revised *Administrative Law Judges' Benchbook* from Bill Brennan and Robin Parker. Ms. Parker reported that the *Benchbook* was approved by the members in attendance at the March 15, 2017, General Meeting. However, the Board did not have a quorum so this matter is being agendized for discussion and consideration today.

Ms. Doi moved to adopt the revised *Administrative Law Judges' Benchbook*. Mr. Stevens seconded the motion. The motion carried unanimously.

18. **DISCUSSION AND CONSIDERATION OF AN EXTENSION OF TIME FOR ADMINISTRATIVE LAW JUDGE WONG TO PRESIDE OVER ALL MANDATORY SETTLEMENT CONFERENCES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker regarding an extension of time for Administrative Law Judge Marilyn Wong to preside over all mandatory settlement conferences so the Board can hire and train additional ALJs. Ms. Parker reported that it has taken much longer to formalize the hiring of the new ALJs so their training has not started although the staff is preparing for it. Furthermore, Ms. Parker commented that ALJ Wong has been extremely effective in settling the protests she presides over. Mr. Brooks moved to extend ALJ Wong's appointment as the designated Mandatory Settlement Conference ALJ for an additional of six months. Mr. Lizárraga seconded the motion. The motion carried unanimously.

19. **EXECUTIVE DIRECTOR'S REPORT**

- A. Administrative Matters.
- B. Case Management.
- C. Judicial Review.
- D. Notices Filed Pursuant to Vehicle Code sections 3060/3070 and 3062/3072.
- E. Other.

Mr. Brennan provided the members with a report on Administrative Matters that identified all pending projects, the Board staff and committee assigned, estimated completion dates, and status. Mr. Brennan indicated that ALJ Vic Ryerson resigned effective August 1, 2017. At Ms. Doi's request at the March meeting, Mr. Brennan researched the dealer fees the Board collects to see if they were decreasing. He indicated that there are only five categories of dealers that are subject to the Board's jurisdiction and pay dealer fees: new auto-commercial; new motorcycle; new ATV; new recreational trailer; and new motorhome. Occupational Licensing provided detailed information that there were 1,491 new auto-commercial dealers in 2015 and 1,512 in 2016. Mr. Brennan indicated that based on this information and the fees collected year-to-date, there is no concern that the number of licensed dealers within the Board's jurisdiction is declining. Dealer fees of \$817,000 were collected during the previous fiscal year. With one month remaining in the current fiscal year, \$781,000 has been collected so the Board may exceed what was collected in 2015-2016.

Ms. Parker indicated the Mega RV/Roadtrek modification protests were dismissed pursuant to a joint stipulation on July 12, 2017; the Board issued the Orders of Dismissal on the same day. In the related court case, KC Jones, Supervising Attorney General, filed the Final Return to Writ of Mandate on July 14, 2017, and requested that the case be closed. Ms. Parker noted that *Ball Kia v. Kia Motors America* settled on the eve of trial. Since the members received their materials, a new modification protest was filed involving Mack Trucks.

20. **CONSIDERATION OF WHETHER TO REQUEST THE DEPARTMENT OF MOTOR VEHICLES TO WITHHOLD THE RENEWAL AND/OR SUSPEND THE EXISTING OCCUPATIONAL LICENSE FOR REO CARTS INC. FOR FAILURE TO FILE THE STATUTORILY REQUIRED SCHEDULES AND FORMULAS (VEH. CODE § 3064/3065 & § 3074/3075) - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Robin Parker , and Danielle Vare concerning whether to request the Department of Motor Vehicles ("DMV") to withhold renewal and/or suspend the existing occupational license of Reo Carts Inc. for failure to file the statutorily required schedules and formulas for Vehicle Code sections 3064 and 3065. Ms. Parker reported that several members of the Board's staff have been in contact with representatives for REO Carts but could not get them to comply with the statutory requirements. There was mention that the company was closed but the Board never received anything in writing from someone with authority so the staff suggested that this matter be considered and then DMV could sort out whether REO Carts was still licensed. Mr. Obando moved to request the DMV to withhold renewal and to take action to suspend the occupational license of Reo Carts Inc. for failure to file the statutorily required schedules and formulas. Ms. Doi seconded the motion. The motion carried unanimously. (After the meeting, the staff learned REO Carts gave up their license and were out of business so no formal request was submitted to DMV.)

21. **PUBLIC COMMENT (Gov. Code § 11125.7)**

No additional public comment was presented.

6. **ORAL PRESENTATION BEFORE THE PUBLIC MEMBERS OF THE BOARD**

CALIFORNIA NEW CAR DEALERS ASSOCIATION v. JAGUAR LAND ROVER NORTH AMERICA, LLC
Protest No. PR-2463-16

Mr. Alvarez C. indicated that although there is no requirement that the Board have a court reporter he apologized to counsel for the court reporter not showing up and for the delays.

Given this matter involves a dispute between a franchisee and a franchisor, Mr. Alvarez C. turned the meeting over to Kathryn Doi, Public Member and Vice President.

After a brief discussion, counsel for Protestant, Halbert B. Rasmussen, Esq. of Arent Fox LLP and counsel for Respondent, Colm A. Moran, Esq. of Hogan Lovells US LLP stipulated to allow the case to proceed without a court reporter. Then the parties asked for an opportunity to confer with their clients. This matter was briefly postponed until after Agenda Item 9.

7. **CLOSED EXECUTIVE SESSION DELIBERATIONS**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board convenes in closed Executive Session to deliberate the decisions reached upon the

evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Pursuant to Government Code section 11517(c)(2), the Board could adopt the proposed decision, make technical or other minor changes, reject the proposed decision and remand the case, or reject the proposed decision and decide the case upon the record.

CONSIDERATION OF PROPOSED DECISION FOLLOWING REMAND

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This matter was postponed until after Agenda Item 9.

8. **OPEN SESSION**

The Public Members remained in open session.

9. **CONSIDERATION OF ORDER VACATING "FORMAL REQUEST PURSUANT TO VEHICLE CODE SECTION 3050(c)(1) CONCERNING ROADTREK MOTORHOMES, INC."**

MEGA RV CORP., dba MCMAHONS RV v. ROADTREK MOTORHOMES, INC.
Protest No. PR-2199-10

MEGA RV CORP., dba MCMAHONS RV v. ROADTREK MOTORHOMES, INC.
Protest No. PR-2201-10

Consideration of vacating "Formal Request Pursuant to Vehicle Code Section 3050(c)(1) Concerning Roadtrek Motorhomes, Inc." directed to George Valverde, then Director of the Department of Motor Vehicles, dated October 23, 2012, in light of Judgment on Petition for Writ of Administrative Mandamus in *Roadtrek Motorhomes, Inc. v. California New Motor Vehicle Board; Mega RV Corp. (Real Party in Interest and Respondent)*, Orange County Superior Court, Case No. 30-2013-00624042, and the Board Decisions dated March 15, 2017, setting aside and vacating the Decisions dated October 17, 2012, in Protest Nos. PR-2199-10 and PR-2201-10, by the Public Members of the Board.

Mr. Alvarez C. indicated that Vehicle Code section 3050(c) provides in part that: "A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide any matter considered by the board pursuant to this subdivision that involves a dispute between a franchisee and franchisor..."

so vacating the referral to DMV in this matter will be considered only by the Public Members and referred this matter to Kathryn Doi, Public Member and Vice President.

Ms. Doi presided over this matter and read the following statements:

“As indicated in the memo provided by Bill Brennan and Robin Parker, the modification protests in PR-2199-10 and PR-2201-10 were sustained by the Public Members at the August 23, 2012, Special Meeting and confirmed at the October 17, 2012, Special Meeting. Additionally, the Public Members referred Roadtrek Motorhomes, Inc. to the DMV for investigation for violating Vehicle Code section 3070(b) for failing to provide notice to Mega RV and the Board of Roadtrek’s intended modification of Mega RV’s franchises.

Roadtrek filed a writ of administrative mandate for each Decision issued by the Board. The trial court sustained the modification protests and denied Roadtrek’s writs. Roadtrek filed an Appeal in the Fourth Appellate District Court. The Appellate Court issued an Opinion on July 14, 2016, concluding that it was error to sustain Mega RV’s two modification protests. The judgment was reversed as to the rulings on the modification protests and the case was remanded to the superior court with directions to enter a judgment setting aside the Board’s decisions on these protests and directing the Board to rehear them.

At the March 15, 2017, General Meeting, the Public Members set aside and vacated its Decisions in Protest Nos. PR-2199-10 and PR-2201-10. As indicated earlier, on July 12, 2017, the parties stipulated to the dismissal of both protests with prejudice. The Board issued the dismissals on July 12, 2017. Therefore, the staff is recommending the “Formal Request Pursuant to Vehicle Code Section 3050(c)(1) Concerning Roadtrek Motorhomes, Inc.” directed to George Valverde, then Director of the Department of Motor Vehicles, dated October 23, 2012, be vacated.”

No comments were presented by the public.

After a brief discussion, Mr. Stevens moved to vacate the October 23, 2012, Formal Request Pursuant to Vehicle Code Section 3050(c)(1) Concerning Roadtrek Motorhomes, Inc. Mr. Obando seconded the motion. The motion carried unanimously.

6. **ORAL PRESENTATION BEFORE THE PUBLIC MEMBERS OF THE BOARD**

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After a brief discussion, Mr. Moran indicated that his client did not stipulate to allow this case to go forward in the absence of a court reporter. The parties agreed to allow the Board to consider this matter at its September meeting. The date was changed to September 20 in San Diego. Ms. Parker indicated that she would provide the parties with a draft

stipulation so there was a written record of the stipulation.

7. **CLOSED EXECUTIVE SESSION DELIBERATIONS**

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Consideration of the Administrative Law Judge's Proposed Decision Following Remand, by the Public Members of the Board.

This matter was taken off the agenda.

8. **OPEN SESSION**

The Public Members remained in open session.

22. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 11:23 a.m.

Submitted by

WILLIAM G. BRENNAN
Executive Director

APPROVED: _____
Ramon Alvarez C.
President
New Motor Vehicle Board